State v. Iniguez (Ricardo)

No. 81750-2

CHAMBERS, J. (dissenting) — The majority finds that the nearly nine month delay in bringing Ricardo Iniguez to trial was presumptively prejudicial and that three out of four of the *Barker*[1] factors weigh against the State. Yet despite this and without much more the majority announces the seemingly contradictory holding that the "totality of the circumstances" does not support a finding that Iniguez's right to a speedy trial was violated. Majority at 25. While I agree with the majority's conclusion that constitutional speedy trial analysis necessarily requires a fact-specific inquiry, given the facts of this case and the number of factors weighing against the State, I would hold that Iniguez was denied his right to a speedy trial and affirm the Court of Appeals. I respectfully dissent.

The majority begins by performing a *Gunwall*[2] analysis and concluding that article I, section 22 of our state constitution provides no greater protection to individuals claiming speedy trial violations than does the Sixth Amendment to the United States Constitution. The *Gunwall* issue was not raised below with the Court of Appeals and was not raised in this court until Iniguez filed his supplemental brief. Even after it was raised, the defendant's *Gunwall* analysis is limited to one page and argues only that because our State has a "long existing requirement that criminal defendants be tried in 60

[1] *Barker v. Wingo*, 407 U.S. 514, 92 S. Ct. 2182, 33 L. Ed. 2d 101 (1972).
[2] *State v. Gunwall*, 106 Wn.2d 54, 54, 720 P.2d 808 (1986).

days," it follows that article I, section 22 should be interpreted to give greater protection than its federal counterpart. Suppl. Br. of Resp't at 6. Generally, we decline to consider issues that are untimely and insufficiently briefed by the parties. *State v. Wethered*, 110 Wn.2d 466, 472, 755 P.2d 797 (1988). In my view, the issue was not timely presented and we have not been provided with sufficient argument or citation to authority from the parties to reach a decision. I would leave for another day a determination of whether our state constitution provides greater protection to defendants asserting their right to a speedy trial than the Sixth Amendment.

Turning to the merits of Iniguez's speedy trial claim, I generally agree with the majority's approach. The exact number of days a trial can be delayed before an individual's speedy trial right is violated is indeed impossible to determine with precision. *Barker v. Wingo*, 407 U.S. 514, 521, 92 S. Ct. 2182, 33 L. Ed. 2d 101 (1972). The majority correctly concludes that the length of delay in this case coupled with the fact that Iniguez spent all of it in custody gives rise to a presumption of prejudice triggering the four-factor *Barker* analysis. Majority at 21-22. I cannot agree, however, with the majority's application of the particular facts of this case to those four factors.

The first factor considered in a *Barker* analysis is how long the delay "stretches beyond the bare minimum needed to trigger judicial examination of the claim." *Doggett v. United States*, 505 U.S. 647, 652, 112 S. Ct. 2686, 120 L. Ed. 2d 520 (1992). Iniguez was arrested on May 25, 2005, yet his

first trial did not begin until February 8, 2006, a delay of nearly nine months.

Next, we consider the reasons for the delay. In this case there were many, and responsibility for most of them lies at the feet of the State. Over Iniguez's objections the court granted four continuances due to: (1) the joinder of Iniguez's case with that of Jimmy McIntosh's, (2) a need to interview witnesses, (3) a scheduling conflict, and (4) discovery of the unavailability of a key witness a week prior to trial. The second delay occurred because two months after Iniguez's arraignment the State had still not interviewed all of the witnesses. The last delay was caused because the State failed to inform its key witness that the trial date had yet again been changed and the witness had left the country on vacation. There is no indication the State made an attempt to bring the witness back so that the trial could proceed without delay.

Setting aside the question of whether our policy favoring joint trials should outweigh a defendant's speedy trial rights, I would give more consideration to the fact that none of the delays in this case were caused by Iniguez himself, and that in at least two instances continuances were required due to the State's lack of diligence. "A defendant has no duty to bring himself to trial; the State has that duty." *Barker*, 407 U.S. at 527 (footnote omitted). While the need to interview witnesses or the unavailability of a key witness for trial may sometimes be valid reasons for a continuance, in this case had the State acted more diligently, the delays could easily have been

avoided. Unlike the majority, I think that on balance this factor should be weighed against the State.

I agree with the majority's conclusion that the third factor, the defendant's assertion of his speedy trial rights, weighs in favor of Iniguez. Iniguez objected to continuing the trial at every opportunity and twice moved for a severance when it became apparent that the needs of his codefendant were the cause of delay. As the *Barker* Court noted, the "defendant's assertion of his speedy trial right, then, is entitled to strong evidentiary weight in determining whether the defendant is being deprived of the right." *Id.* at 531-32. It is hard to imagine how Iniguez could have made any clearer his objection to the pretrial delay and his wish to assert his speedy trial rights. While the majority correctly concludes that this factor weighs against the State, I would emphasize that it does so heavily.

The last factor considered is the prejudice caused to the defendant by the delay. Iniguez was in jail during this entire process, and prejudice to the defendant should be presumed. The *Barker* Court wrote at length about the detrimental effect pretrial incarceration can have on defendants, noting, "[i]t often means loss of a job; it disrupts family life; and it enforces idleness. . . . The time spent in jail is simply dead time." *Id.* at 532-33. While Iniguez has not attempted to demonstrate the delay impaired his defense, the Supreme Court has said that "impairment of one's defense is the most difficult form of speedy trial prejudice to prove because time's erosion of exculpatory

evidence and testimony 'can rarely be shown.'" *Doggett*, 505 U.S. at 655 (quoting *Barker*, 407 U.S. at 532). As such, "affirmative proof of particularized prejudice is not essential to every speedy trial claim." *Id*. Iniguez spent nine months in jail, continually asking the State to bring this case to trial. I would conclude this last factor also weighs heavily against the State.

In applying the facts of this case to *Barker's* analytical framework, I conclude that Iniguez's constitutional speedy trial rights were violated. Even were the majority's analysis correct, we would still be left with a delay that was presumptively prejudicial and three of four factors weighing against the State. It is the State's burden to bring defendants to trial in a timely manner. That burden is heightened when the defendant is incarcerated, asserts his rights, and the delay extends. Although the remedy for such violations is harsh, I would hold that on the facts of this case the State did not meet its burden. I would dismiss the case with prejudice and affirm the Court of Appeals.

I dissent.

AUTHOR:
Justice Tom Chambers

WE CONCUR:

Justice Barbara A. Madsen	Justice James M. Johnson
Justice Richard B. Sanders	